PEACEABLE BOYCOTTING.

"Nor is it the province of judges to mould and stretch the law of conspiracy in order to keep pace with the calculation of political economy." (Bowen, L. J., in Mogul S. S. Co. *vs.* McGregor *et als.* 23 Q. B. D. 620, 1889.)

"It is difficult to see how, in a case of a conflict of interest, it is possible to separate the objects of benefiting yourself and injuring your antagonist. Every strike is in the nature of an act of war. Gain on one side implies loss on the other, and to say it is lawful to combine to protect your own interest but unlawful to combine to injure your antagonist, is taking away with one hand a right given by the other." (Stephen's "History of Criminal Law of England," vol. iii, p. 218.)

The bill in equity brought in March, 1893, in the United States Circuit Court for the Northern District of Ohio by the Toledo, Ann Arbor and North Michigan Railway Company against the Pennsylvania Company, other connecting lines and P. M. Arthur, Chief Executive of the Brotherhood of Locomotive Engineers, was the means of deciding adversely to labor certain propositions of importance in the pending struggle between labor and capital. There being a strike of the engineers on the Ann Arbor, the engineers of eight connecting lines (which lines were joined as defendants in the bill) undertook by concerted action, as members of the Brotherhood of Locomotive Engineers, to which all belonged, to assist the strikers. The chief executive officer of the Brotherhood, P. M. Arthur, being authorized by a by-law of the organization to take this course when circumstances seemed to him to make it advisable, notified the superintendents of the eight connecting lines that the engineers on their lines would quit work if required to handle Ann Arbor freight; the immediate purpose being to compel these lines to reject Ann Arbor freight to the loss of the Ann Arbor, and the ultimate purpose of course being to enable the Ann Arbor strikers to prevail in their contest with the railroads. There was no malice in fact, no violence, no fraud.

This bill was then brought and it was alleged therein that the conduct of the engineers of the connecting lines and of Mr. Arthur was a violation of the Interstate Commerce Act.* By this act all railroads doing an interstate business are required to grant to all connecting lines equal facilities without discrimination, and a penalty is added against railroads, or persons within their employ, who violate any of the provisions of the act. The court was therefore asked to enjoin the employes on the connecting lines from discriminating against the Ann Arbor by refusing to handle its freight, and to enjoin Mr. Arthur from promulgating or keeping in force any order requiring or commanding such discrimination of the employes. The court granted the injunction as prayed for and explained its views at length in two opinions,† that of Judge Taft being especially able and clear. Any intention of compelling an employe to remain in his employment is disclaimed. He may quit if he thinks best, although to do so is a violation of his contract, and the other party must be left to his suit for damages. But so long as the employe remains in his employment, the law can compel him to do his whole duty; and part of his duty, when employed on an interstate line, is to grant equal facilities to connecting lines. By refusing to do this he subjects himself to the penalty mentioned above, and when his refusal is in concert with others in order by this unexpected act to compel the railroad which employs them to discriminate against other lines, he is guilty of a criminal conspiracy, and not only that, but of a conspiracy to violate a law of the United States, which makes him liable to a further and more severe penalty. By promulgating the order to quit, Mr. Arthur aids and abets the criminal discrimination of the men, as well as being similarly engaged with them in a conspiracy to procure the officials of the connecting lines to violate the act. Mr. Arthur and the men are moreover civilly liable to the

* Act of February 4, 1887.

† *Fed. Rep.*, May 9, 1893, pp. 730 and 746.

Ann Arbor for the conspiracy, and for procuring the connecting lines to violate their statutory duty of non-discrimination to the Ann Arbor. Here are ample grounds for an injunction, in the absence of which irreparable damage will be done to railroads and to the public. Such is the reasoning of the court.

The various brotherhoods of railroad employes are organizations embracing several special forms of railroad service. The Locomotive Engineers' is the oldest and is very powerful, having some 35,000 members distributed over this country and Canada. Its course in labor troubles has been noticeably moderate and conservative. The effect of this decision seems to be to restrict the action of the brotherhoods in cases of strike to the road where the strike occurs. The men there may go out, for they thus cease to be employes of the railroad and to be within the provisions of the act. But their fellow-employes on connecting lines may no longer assist them by giving notice of an intention themselves to strike if required to handle the freight of the offending line; and in a certain important respect, therefore, the brotherhoods are divided into as many bodies as there are interstate railroads. This important conclusion of law, it should be borne in mind, comes not from express legislation, but crept between the lines of a statute which was passed for an entirely different purpose. The Interstate Commerce Act was a measure in the interest of the people against the corporations. Its objects were to prevent strong railroad lines from oppressing weak ones, and large dealers from oppressing small ones—by inequitable discriminations in freight rates, and to prevent traffic from being pooled by the railroads to the injury of the public. Any other effects of the law were unforeseen, not appearing in its language, nor avowed in the discussions prior to its passage. And though its legal implications are strictly as much a part of a statute as what is expressed, yet it is to be regretted that so important a result should have been only implied, with no opportunity for discussion or real

acceptance. It is an illustration of the uncertain results which may follow the passage of a law.

This decision is important because it is another method of suppressing the peaceable boycott, to which our courts have already shown themselves distinctly hostile. To be sure it is not certain that the court in this case might not have reached the same conclusion if the Interstate Commerce Act had not existed. The allegations in the bill must have been different, but the decided cases would have apparently justified the court in reaching much the same conclusion. State *vs.* Donaldson* decided that for employes to combine and notify their employer that unless he discharged certain fellow-workmen they would quit his employment, was an indictable conspiracy. And Walsby *vs.* Ansley, an English case decided six years earlier,† is to the same effect—that such conduct is a criminal conspiracy at common law. These are cases almost identical with the one before us. In them the objectionable employes were boycotted; in this the Toledo, Ann Arbor and North Michigan Railway Company was boycotted. Still, the court's interpretation of the Interstate Commerce Act is one more weapon against peaceable boycotts, and the grounds on which the law restrains these are now so various, and it may be said so vague, that a slight historical examination of the subject and an attempted analysis of it from the modern standpoint cannot be out of place. Why a strike is justifiable and a boycott not, what are the legitimate limits of competition and when does it become a restraint of trade? are questions which I venture to think have not been decided by the court on any consistent principles, or at least on principles that will bear the test of modern views on social science.

Views on social science have been an element in decisions on these subjects, and they are an element in this decision. The regulation of public policy to a certain extent is a

* 32 New Jersey Law, 152 (1867).
† 30 L. J. M. C., 121 (1861).

recognized part of the jurisdiction of courts. The meaning of so general an expression, for instance, as *restraint of trade* has always been left for the court to determine in each particular instance, and as might be expected, at different times and under varying circumstances, different opinions have been held as to what was an unlawful restraint of trade. "Accordingly it was held by Lord Ellenborough in Rex *vs.* Cleasby (about 1812), that the engrossing of all the oil of a whaling season was no offence at common law in the *then* state of society. And he so held notwithstanding Rex *vs.* Waddington, 1 East, 143, in the time of George III., where the defendant was convicted and punished for engrossing hops, that is, buying them at wholesale with the intent to again sell them at wholesale." * In this Ann Arbor case the court held opinions on the score of public policy not favorable to labor unions. It emphasizes the injury to the public and to the railroads "engaged in a great public undertaking" if the action of the engineers be successful, and is clearly of the opinion that the conduct of the men is unreasonable as well as unlawful. "The employes of the defendant companies are not dissatisfied with the terms of their employment." And again: "The arbitrary action of a few hundred men, who, without any grievance of their own, quit their employment to aid men, it may be on some road of minor importance, who have a difference with their employers which they fail to settle by ordinary methods." † Clearly the court thought the course of the men an unjustifiable extension of the power of labor organizations and non-consistent with public policy. Perhaps, had it held different views on the relations of labor and capital, it might not have found its interpretation of the interstate commerce act so unavoidable, and have reached a different conclusion.

It should be stated at the outset that this discussion has no ethical bearing. I recognize it to be perfectly possible

* Erle "Law Relating to Trade-Unions," pp. 9 and 11.

† *Fed. Rep.*, May 9, 1893, pp. 738 and 753.

that a line of conduct may have everything to condemn it ethically which must still be admitted to be legal. In the struggle of life the law should beware how it disarms one party and leaves the other armed and aggressive. To demand that the conduct of one section of the community shall be governed by a higher ethical standard than that of others is to commit injustice. So that to say that the peaceable boycott is often oppressive is to say nothing to the purpose, very many of our industrial operations being of the same character.

A person approaching the consideration of the relations of labor and capital, or any important social question, is not assisted by blinding himself in the slightest degree to the actual condition of the industrial world. While it is pleasant to note the instances which often occur, of good will and unselfishness in business affairs, it is perfectly clear that this is not the normal state of things. Among the multitudes who work for a subsistence, the pressure of competing numbers tends always to crowd out those who cannot reach a high standard of efficiency in each particular occupation. This high standard of efficiency is not, however, the same thing as a high standard of morality. There is nothing in business success of any kind which makes necessary the practice of unselfishness or benevolence or any altruistic quality. Competition, which probably effects a greater aggregate of good than of evil, seems to have this drawback, that it prescribes self-seeking as necessary to life. The industrial world is in a state of unsympathetic antagonism,* where a man's interests are opposed to those of others in the same occupation, because what they gain he frequently loses. We should look for no ideal motives in the laboring class when we see them nowhere else.

Of similar futility are arguments against peaceable boycotts because they are an injury to the public. There can be no higher public policy than justice. If these movements

* Note the popular saying, "*There is no friendship in business.*"

stand condemned on that ground it is sufficient. But that a strike causes all concerned, employers, employed and public, great loss, and that this result might have been prevented, but for selfishness, ignorance or an arrogant pride of power in one party or in the other—is not necessarily material. Right conclusions cannot be formed in this purely empirical way. It is not much to the point to object that the recent Lehigh Valley strike cost the railroad six millions of dollars, the employes one-half a million, and left both sides about as they were. The real question is, what is justice? what is the measure of liberty which society should grant to its component individuals in the interest of its own stability? To infringe this is injustice. A community should place the development of individuals above the development of wealth. The rights of property, important though they be, should not be suffered to overshadow the rights of individual liberty. For in these latter the well-being of the community is deeply concerned. It is to be feared that with the increase of wealth among us this encroachment is taking place, and that the individual is now born with such a mass of implied responsibilities arising from the vested property rights of others as to be a hindrance to his advancement. In a great degree this is perhaps inevitable, but it is one of our dangers. And surely courts should not increase these responsibilities without a full sense of the gravity of the situation. Yet in this very case the court places upon the men, as being employed in a semi-public service, serious responsibilities which they are held to have undertaken by implication, but for which they receive no return.* They are employed on ordinary competitive principles, have no permanent tenure of their positions and no share in the profits. This is allowing property rights to encroach on personal rights. If history has a lesson, it is that in great communities the seed of destruction has not been any deficiency of national wealth, but the impossibility of keeping up,

* P. 752.

along with the increased national wealth, a high national character. Assyria, Israel, Lydia, Persia, Carthage, Rome, show this. In each one of these great empires a period of wonderful material prosperity immediately preceded a period of decay. And more important to our country than millions it is that no man's liberty should be unjustly abridged by our courts.

These arguments of injury to the public, used to condemn a course of action which is new, are not unnatural, though usually highly illusory. They were used a hundred years ago against strikes and all concerted efforts of laborers to better their condition, and hundreds of years before that to support a state bordering on serfdom. A radical change in the social system is always injurious to many individuals. Probably Hume's profound remark—"There is no abuse so great in civil society as not to be attended with a variety of beneficent consequences"—may be inverted, and still read truly: there is no institution so beneficial in civil society as not to be attended with a variety of evil consequences. In the feudal days of English labor there was no laboring class, as we understand the expression, for there was no manufacturing on a large scale. This dates from the middle of the last century. Prior to that, manufactures were imported, and laborer meant agricultural laborer. These were bound to the soil or to the household retinue as the property of the feudal superior. The early labor legislation was of the harshest character. In 1349 was passed the Statute of Laborers, 22d Edw. III, with the view, it is suggested,* of providing the lords with a substitute for the system of villeinage then breaking down. The preamble of the statute recites that it was enacted to check the rise of wages incident on the black death. Workmen are to serve whoever first requires them, at a fixed rate of wages, on pain of imprisonment. They must remain in their existing places of residence and swear to obey the provisions of the act. This

* Stephen, "History of Criminal Law of England," v. iii., p. 204.

statute is called coarse and brutal in an American decision,* but for centuries its influence ruled in English legislation. The second and third of Edward VI., c. 15 (1548), forbids "all conspiracies and covenants of workmen not to make or do their work but at a certain rate or price." The third conviction is punishable by the pillory, the loss of an ear, and being taken as a person infamous. In the seventeenth and eighteenth centuries numerous statutes were passed establishing rates of wages and hours of labor in the different occupations. Both hours and rates were to be altered only in the discretion of a Court of Quarter Sessions. These statutes, the court says in a New York case, Master Stevedores' Association *vs.* Walsh, 2 Daly, 1 (1867), were "laws made in the interest of employers, in the creation of which those who were most affected by them had no share." In 1799 (39 and 40 George III.) were passed the Combination Laws, designed to suppress all combinations of workmen for the purpose of raising wages. Contracts for obtaining an advance of wages, for shortening hours or decreasing the quantity of work—except contracts between a single journeyman and his master—subject the person entering them to imprisonment at hard labor for three months. This was the high-water mark of adverse labor legislation. In 1825 was enacted 6 George IV., c. 129, which was, considering all things, of a very liberal character. It legalized certain labor combinations and strikes, and first attempted to establish the distinction between persuasion and intimidation as means of influencing workmen to leave their employment. Now began a notable struggle in the English court. The new statute and the new tendency were regarded by the judges as against *public policy*, and they adopted an interpretation of the statute which went very far toward annulling it. They decided that a combination among workmen to raise wages was criminal at *common law*, and that the statute had not repealed the common law, except as to the exact conduct

* Johnson Harvester Co. *vs.* Meinhardt, 60 How. Prac. Rep., p. 168 (1880).

specified in the statute. While allowing certain strikes, therefore, the result of their view of the law was, as observed by Stephen, "to render illegal all the steps usually taken by workmen to make a strike effective." By reason of the great length of time during which statutes prohibiting such combinations had been in force, precedents of indictments at common law for these conspiracies were few and of doubtful authority, and the better opinion now seems to be that the court erred in its interpretation.*

The view of the English courts of the time is unofficially summed up by Sir William Erle in his "Law Relating to Trade-Unions." This work was practically a part of the report submitted by the royal commission appointed to examine the law relating to trade-unions, of which commission Sir William Erle was a member. He had previously been an eminent judge of the Court of Common Pleas. Sir William Erle says: "Every act causing an obstruction to another in the exercise of the right comprised within this description—done, not in the exercise of the actor's own right, but for the purpose of obstruction, would, if damage should be caused thereby to the party obstructed, be a violation of this prohibition." The question of course comes on the meaning of the terms. What does "obstruction" mean to Sir William Erle? He defines it an "unlawful coercion." But when he comes to define unlawful coercion it is impossible to distinguish this from whatever is injurious to the employer, and is expected to be injurious. He says on page 74, "Although a combination merely for the purpose of raising wages is permitted by the statute,† and a simultaneous stop from work of several men really intended for that purpose is permitted, yet a simultaneous stop for the immediate purpose of inflicting a loss upon an employer, and so of coercing his will with an ultimate view of raising wages, does not seem to me to be

* Wright on Cr. Cons. 56; Master Stevedores' Assn. *vs.* Walsh, 2 Daly, 1 (1867); and Curran *vs.* Treleaven, Cox's Cr. Cases, v. 17, 356 (1891).

† 6 Geo. IV., c. 129.

permitted." On which Sir James F. Stephen thus comments, in the words placed at the head of this paper: "It is difficult to see how, in a case of a conflict of interest, it is possible to separate the objects of benefiting yourself and injuring your antagonist. Every strike is in the nature of an act of war. Gain on one side implies loss on the other, and to say it is lawful to combine to protect your own interest but unlawful to combine to injure your antagonist, is taking away with one hand a right given by the other." In 1875 was enacted the Conspiracy and Protection of Property Act,* a statute of the utmost importance. Of this I shall speak further.

The courts were greatly assisted in the repressive tendencies which they manifested toward labor organization by the very peculiar nature of the crime of conspiracy. The boundaries of this crime are altogether indefinite, not to say unknown. Not only is it a criminal conspiracy to combine to commit a crime, and to combine to commit an act which, if done by one, would subject him simply to an action for damages—but it may be conspiracy to combine to commit an act which would be entirely innocent if done by a single person. This is where considerations of "public policy" are applied.† What the conduct is, which men may innocently do alone, but becomes criminal if done together, rests in the discretion of the courts. It is defined in no statutes and no decisions. It is notorious that many members of the legal profession believe that the scope of this crime should be restricted; for its uncertainty and the power which it gives the court of saying what public policy shall be, are deemed equally objectionable. "There is perhaps no crime, an exact definition of which it is more difficult to give than conspiracy." ‡ "No branch of the law has gone through so many transformations as the law relating to conspiracy."§ Mr.

* 38 and 39 Vict.

† "A reason which puts an end to all argument." Morawitz on Priv. Corps., 2d ed., section 729.

‡ State *vs.* Donaldson, 32 N. J. Law, 152 (1867).

§ State *vs.* Glidden, 55 Conn., 60., (1887).

Wright in his learned monograph on the subject has ascertained that the law had its origin in the Star Chamber,* "a court which legislated as well as judged, and which, as Lord Clarendon says in his 'History of the Great Rebellion,' held for honorable that which pleased and for just that which profited." † From this beginning it gradually extended until in 1717, Hawkins, in his "Pleas of the Crown," lays down the general doctrine "that there can be no doubt that all conspiracies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law." On this Mr. Wright comments, "A proposition to which unless by '*wrongfully*' he meant by criminal means, the authorities cited by him with the exception of the argument of counsel as reported by Keble, furnish little or no support." Mr. Wright maintains that the view held by the English court after the passage of 6 George IV., in 1825, that combinations for controlling masters were criminal at common law—was erroneous, and the establishment of such a rule "would seem to be a modern instance of the growth of a crime at common law by reflection from statutes, and of its survival after the repeal of those statutes, somewhat in the same manner in which combinations for certain kinds of fraud continued to be criminal after those frauds had ceased to be punishable apart from combination" (p. 56.)

In recent times the laboring classes have attempted to better their condition and command the labor field by more extensive combinations. The boycott is a modern invention. The events from which this word originated are thus narrated in Justin McCarthy's "England under Gladstone." "Captain Boycott was an Englishman, an agent of Lord Earne, in the wild and beautiful district of Connemara. In his capacity as agent he had served notices upon Lord Earne's tenants. . . . The population of the region for miles around resolved not to have anything to do with him, and

* See Poulterers' Case, 9 Co. Rep., 55 B.
† Argument of counsel in State *vs.* Glidden.

as far as they could prevent it, not to allow any one else to have anything to do with him. *His life appeared to be in danger—he had to claim police protection.* . . . To prevent civil war the authorities had to send a force of soldiers, and Captain Boycott's harvests were brought in guarded always by the little army."* This lawless and unjustifiable proceeding was the origin of the word, and its unfortunate origin has undoubtedly contributed to the prejudice which the court feels toward acts called by this name. For the meaning of the word, by a natural process of development, has been extended until it now includes peaceful labor movements. The definition in Webster's Dictionary, edition of 1890, carries no necessary implication of violence. "To combine against a landlord, tradesman, employer or other person to withhold social or business relations from him and to deter others from holding such relation." The idea of our courts, however, has uniformly been that the word implied lawless violence, or what directly led to it.† At all events, in most of the cases decided against boycotting in this country by way of injunction to restrain it, or by indictment to punish it, there has been present a distinct element of violence. This is true in People *vs.* Wilzig, 4 N. Y. Cr. Rep., 403 (1886); in People *vs.* Holdorf, in People *vs.* Kostka (same volume) and numerous other cases. Undoubtedly the decisions have gone farther. They pronounce a boycott an unwarrantable attempt to interfere with an employer's business, and as he must frequently submit to it or be ruined, as practically coercion. The avowed purpose being to ruin a man's business, it makes no difference whether force be used or not.‡

Let us recall the language of Sir James F. Stephen, which I have already quoted. "It is difficult to see how, in case of a conflict of interest, it is possible to separate the objects

* The italics are mine.

† See language of court in State *vs.* Glidden, 55 Conn., 50, (1887.)

‡ Old Dom. S. S. Co. *vs.* McKenna, 30 *Fed. Rep.*, 49, and other cases.

of benefiting yourself and injuring your antagonist." The passage of the Conspiracy and Protection of Property Act (38 and 39 of Vict., 1875) was an appreciation in England of this manner of reasoning. Its important section is this: "An agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime." This puts an end to conspiracies to accomplish something relative to trade disputes which one person might without criminality do alone. Intimidation is forbidden under a severe penalty, and what is intimidation is very fully defined. It includes violence to the other, his wife, children, or injury to his property; persistently following such person about; hiding his tools or clothes; and watching and besetting the house where he is. The advanced character of the English law on this subject as compared with our own is shown by two very recent cases, Gibson *vs.* Lawson and Curran *vs.* Treleaven.* In the first the employes at an iron works notified their employer that if a certain fellow-workman did not join their union they should quit. The fellow-workman was notified by the superintendent of the employer, but declined to join the men's union and he was dismissed to avoid a strike. The men were indicted, but the court held that their conduct was allowable under the recent act. The second case is still stronger. Here an employer was notified by members of a trade-union that if he continued to employ non-union men the unions would do their best to injure his business, and on his declining to bind himself, the defendant, a person in authority in the trade-union, called to the employer's men to quit work, which they did. This conduct also was decided to be no longer criminal. There was no malice in fact toward the employer, the purpose of the men being to obtain higher wages.

* Cox, Cr. Cases, 17, p. 356 (1891).

This is substantially the position for which I contend—the position of the English law. Peaceable efforts,—employed not for malice but for the interest of those using them, for the bettering of their condition,—to induce others to withdraw their labor from an employer whose conduct is deemed hostile to the general cause, should not be restrained or punished by the courts. No matter if the purpose be to dictate to the employer, to control his business, to direct him, if possible, as to whom he will employ and what he will pay, and to prevent others from taking the vacant places,—to ruin him, if you will. All these acts done under the above-mentioned restrictions are precisely in the spirit of the familiar industrial processes about us.

Consider the nature of the act when a powerful commercial establishment puts down prices in order to undersell weaker competitors, or enters into an arrangement with other houses by which this is done. This is lawful competition, yet it is done in a deadly spirit of destruction, with an intent to ruin which has no counterpart in labor movements. The small dealer is without refuge. The lesser amount of his capital puts him at a disadvantage from which he cannot escape, and as this underselling is necessarily done by a successful house, it means an effort to make greater, profits already great. Whereas workmen may well be excused for a certain hardness toward others, having rarely more than a narrow margin between them and penury. In truth every kind of competition, so far as it is beneficial to one, is to nearly the same degree injurious to others. Every merchant who makes an attractive display of his goods, who advertises widely and ingeniously, who searches for popular novelties, does all these things in order to draw custom to himself. And this increased custom he perfectly well understands is taken from other merchants, and he may therefore be said in a sense to follow a line of conduct for the purpose of injuring others. It is very difficult to distinguish at this point. Competition is a state of war. The

test of injury to one's opponent is clearly no test. If force be barred and actual malice, when this is the principal motive of the conduct in question, all will have been done that is practicable.

Here is the language of the English court in the very recent case, Curran *vs.* Treleaven, cited above, which may be said to express the latest position of the English law on this question:

"The recorder held that though an agreement to strike to benefit themselves would be now a lawful agreement, a strike which would have the effect of injuring the employer is illegal and indictable at common law. He cites in support of this view some phrases from the judgments of the Lords Justices in the case of Mogul S. S. Co. *vs.* McGregor *et als.* But with deference he has somewhat misapprehended the point of those observations. It is true that where the object is injury, if the injury is effected an action will lie for the malicious conspiracy which effected it; and therefore it may be that such a conspiracy, if it could be proved in fact, would be indictable. But it was pointed out in some detail by the court of first instance, that when the object is to benefit one's self, it can seldom, perhaps it can never, be effected without some consequent loss or injury to someone else. In trade, in commerce, even in a profession, what is one man's gain is another's loss; and where the object is not malicious the mere fact that the effect is injurious does not make the agreement either illegal or actionable and therefore not indictable."

The common law doctrine of freedom of trade, of unlimited competition, needs revision. It has inherited from feudal times an hostility to united labor, and is not consistent with itself. Sir William Erle expounds this doctrine in language that might have been written by Herbert Spencer, and the idea of which seems actually identical with Mr. Spencer's famous definition of justice. "Every man has a right under the law as between him and his fellow-subjects,

to full freedom in disposing of his own labor and his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others." * But the practice is otherwise. As a matter of fact, says Stephen, "It is no less true that freedom of trade in the wide sense, namely its freedom from all legislative interference, the doctrine that each individual man and every body of men however constituted, is the best judge of his or their own interests and ought to be allowed to pursue those interests by any method short of violence or fraud, is quite a modern doctrine. It was for many centuries opposed to the whole current of English legislation."† The law has not yet adapted itself to the new position of the laboring class, arising from the introduction of the *great industry*, a thing of hardly a century in England and of less than half a century in our country. The competitive idea must be developed if it is to exist at all.

The process by which ideas on these subjects have arisen and developed is interestingly shown by Sir Henry Maine in his work on "Village Communities." His researches led Maine to the conclusion that in the ancient village community which was the original political unit among Aryan peoples, price was regulated by custom, and that to seek the highest possible price for one's goods would have been regarded as immoral conduct. The highest-possible-price idea now current in traffic was an outcome of trading at the markets or fairs with the inhabitants of other communities, who were regarded as more or less in the light of enemies. From this source the idea spread over the world. This conclusion shows, if it were necessary to show, the folly of attaching any particular sacredness to principles of conduct because they are old.

* *Op. cit.*, p. 12.
† *Op. cit.*, v. iii, p. 203.

The laboring class of a country is bound together by a common interest of vital importance. The earnings in the employments called professions are not the same for different members. Greater skill or diligence brings greater rewards. But the work of the laboring classes so called is relatively unskilled. In the occupations in which they are engaged all can do the work about equally well. There is little opportunity for superiority and all are about equally paid. Of a half dozen physicians or architects or electrical engineers in a city no two will be receiving the same compensation, but able-bodied car-conductors or stevedores or truckmen are paid the same wages. Any one man's greater skill will not bring him an increase. The wages of all must rise, if of any, and this fact makes union natural and necessary. Our civilization requires for its continuance the performance of a vast amount of unskilled routine labor and seems to make imperative the existence of a laboring class. The only way that these classes can improve their condition is by united action among their members. This shows the supreme importance of labor unions. It would justify them and should dispose the law to regard them favorably if their success had been far less than it has. "The fact was shown in evidence before the British royal commission which reported in 1869 that there have been fewer disputes with employers and greater permanence of wages in the trades with the strongest and richest and most extended unions."* Other causes may benefit the working classes by diminishing the prices of the articles which they consume, but the only way in which they are likely to obtain more of those articles, the price remaining the same, is by some means which regulates and controls the supply of labor.

This necessary unity of interest among the members of the working class is an important element in the consideration of labor questions. The cause of each is the cause of all. Their purpose is, other things being equal, to obtain

* Johnson Harvester Company *vs.* Meinhardt, 60 How. Prac. Rep., p. 179.

the highest possible wages for what they do. The purpose of their employers is, other things being equal, to obtain the work for the least amount of money. The employers, on their side, have a comprehensive view of the whole labor field. While each employer is frequently competing to the death against others in the same line of business, this competition does not necessarily involve any conflict between them as to the wages paid their employes. It is not infrequent for employers in the same business to agree on rates of wages. Such a course is evidently legal, but it operates as a combination against the men. And such a combination—but a few persons being in it—can usually be made without great difficulty. A dozen employers of labor meet at lunch in some metropolitan hotel, and in a single afternoon make arrangements which control millions of dollars and affect the wages of thousands of employes. On the other hand the men labor under inherent disadvantages. They have not usually as good a mental training for the management of such large affairs. They have not the same knowledge of the state of the business, of the profits enjoyed by their employers. They are in danger of being misled by the headstrong or the selfish; and the countless differences of disposition, temper and nationality are so many disintegrating forces. It must require a fair degree of prudence, self-restraint and wisdom, in the members of a labor organization, to make it successful, and the fact that many fall to pieces is a proof of this. It is for the courts to say whether they will favor these useful organizations by a liberal course of construction, or discourage them by its opposite.

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NOTE.—While this paper was in press the injunction issued by Judge Jenkins, Circuit Judge for the Eastern District of Wisconsin, in the case of the Receivers of the Northern Pacific Railroad Company, came to my attention. Although in accordance with the views above expressed, this injunction seems to me all wrong. I can see but one respect in which it is not supported by decided cases of authority, and

therefore requires comment. The prohibition against conspiring to quit, or advising others to quit, the employ of the Receivers, with the intention of crippling the railroad property, can be sustained by much authority. These words look to an organized, pre-arranged, quitting, and this was forbidden in the Ann Arbor case. But the following words seem to refer to a quitting by individuals independently: "*and from so quitting the service of the said receivers without notice, as to cripple the property, or to prevent or hinder the operation of said railroad.* If this means that the men cannot, singly and spontaneously, leave their employment, the occasion does indeed go beyond the Ann Arbor decision, or any other, and seems both monstrous in principle and without authority from the decided cases.—*C. A. Reed.*